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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

WES ARVIN ROCERO  
4405 Miller Creek Court  
Stockton CA 95219

Respiratory Care Practitioner License No. 19520

Respondent.

Case No. R-2081

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 6, 2007, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation No. R-2081 against Wes Arvin Rocero (Respondent) before the Respiratory Care Board.

2. On or about August 18, 1997, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 19520 to Respondent. The Respiratory Care Practitioner License expired on February 28, 2005, and has not been renewed.

3. On or about June 6, 2007, Jennifer Porcalla, an employee of the Complainant Agency, served by Certified and First Class Mail a copy of the Accusation No. R-2081, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

1 which was and is 4405 Miller Creek Court, Stockton CA 95219. A copy of the Accusation, the  
2 related documents, and Declaration of Service are attached as exhibit A, and are incorporated  
3 herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the  
5 provisions of Government Code section 11505, subdivision (c).

6 5. On or about June 9, 2007, Roy Rocero signed a certified mail receipt for  
7 service of the Accusation. A copy of the receipt is attached as exhibit B, and is incorporated  
8 herein by reference.

9 6. On or about June 21, 2007, Senior Legal Analyst wrote a letter to  
10 respondent informing him that a signed Notice of Defense was due on that date, and extending  
11 the deadline until June 28, 2007. She informed him that if a Notice of Defense was not received  
12 by June 28, 2007, a default decision would be taken against his license. Respondent did not  
13 return a signed Notice of Defense by the deadline.

14 7. Business and Professions Code section 118 states, in pertinent part:  
15 "(b) The suspension, expiration, or forfeiture by operation of law of a license  
16 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the  
17 board or by order of a court of law, or its surrender without the written consent of the board, shall  
18 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the  
19 board of its authority to institute or continue a disciplinary proceeding against the licensee upon  
20 any ground provided by law or to enter an order suspending or revoking the license or otherwise  
21 taking disciplinary action against the license on any such ground."

22 8. Government Code section 11506 states, in pertinent part:

23 "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
24 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
25 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
26 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

27 9. Respondent failed to file a Notice of Defense within 15 days after service  
28 upon him of the Accusation, and therefore waived his right to a hearing on the merits of

1 Accusation No. R-2081.

2 10. California Government Code section 11520 states, in pertinent part:

3 "(a) If the respondent either fails to file a notice of defense or to appear at the  
4 hearing, the agency may take action based upon the respondent's express admissions or  
5 upon other evidence and affidavits may be used as evidence without any notice to  
6 respondent."

7 11. Pursuant to its authority under Government Code section 11520, the Board  
8 finds Respondent is in default. The Board will take action without further hearing and, based on  
9 Respondent's express admissions by way of default and the evidence before it, contained in  
10 exhibits A through G, that the allegations in Accusation No. R-2081 are true.

11 12. The Respiratory Care Board further finds that pursuant to Business and  
12 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed  
13 for in the Accusation total \$909.00, based on the Certification of Costs contained in Exhibit G.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Wes Arvin Rocero  
16 has subjected his Respiratory Care Practitioner License No. 19520 to discipline.

17 2. A copy of the Accusation and the related documents and Declaration of  
18 Service are attached.

19 3. The agency has jurisdiction to adjudicate this case by default.

20 4. The Respiratory Care Board is authorized to revoke Respondent's  
21 Respiratory Care Practitioner License based upon the following violations alleged in the  
22 Accusation:

23 3750.5(a) [possession of a controlled substance] and 3750.5(b) [use of a  
24 controlled substance] in that he was in possession of, and under the influence of  
25 methamphetamine, a Schedule II controlled substance, on October 15, 2006 and January 25,  
26 2007;

27 3750(d), 3750.5(d), 3750.5(e) and 3752 [conviction] in that on November 7, 2006,  
28 he entered a plea of no contest to violating Penal Code section 148, resisting a public

1 officer and Health & Safety Code section 11364, possession of paraphernalia used for  
2 smoking a controlled substance. On November 7, 2006, he was granted deferred entry of  
3 judgment and ordered to enroll in a drug abuse program. On January 29, 2007, he was  
4 convicted on his plea of no contest to violating Penal code section 594(A), vandalism.

5 5. Respondent is hereby ordered to pay the above costs of investigation and  
6 enforcement of this action.

7 ORDER

8 IT IS SO ORDERED that Respiratory Care Practitioner License No. 19520,  
9 heretofore issued to Respondent Wes Arvin Rocero, is revoked.

10 Respondent is ordered to reimburse the Respiratory Care Board the amount of  
11 \$909.00 for its investigative and enforcement costs. The filing of bankruptcy by Respondent  
12 shall not relieve Respondent of his responsibility to reimburse the Board for its costs.

13 Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all  
14 costs ordered under Business and Professions Code section 3753.5 have been paid.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
16 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
17 within seven (7) days after service of the Decision on Respondent. The agency in its discretion  
18 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the  
19 statute.

20 This Decision shall become effective on September 28, 2007.

21 It is so ORDERED August 29, 2007.

22  
23 Original signed by:  
24 LARRY L. RENNER, BS, RRT, RCP, RPFT  
25 PRESIDENT, RESPIRATORY CARE BOARD  
26 DEPARTMENT OF CONSUMER AFFAIRS  
27 STATE OF CALIFORNIA  
28

1 Attachments:

2 Exhibit A: Accusation No. R-2081, Related Documents, and Declaration of Service

3 Exhibit B: Certified Mail receipt for Accusation

4 Exhibit C: Certified copy of Arrest Report from Stockton Police Department dated October 15, 2006;

5 Exhibit D: Certified copy of Superior Court of California, County of San Joaquin court documents for *People of the State of California vs. Wesley Arvin Rocero* case no. SM253624A;

6 Exhibit E: Certified copy of Arrest Report from Stockton Police Department dated January 25, 2007;

7 Exhibit F: Certified copy of Superior Court of California, County of San Joaquin court documents for *People of the State of California vs. Wesley Arvin Rocero* case no. SM255483A;

8 Exhibit G: Certification of Costs: Declaration of Catherine Santillan

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